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7 TIME WARNER ENTERTAINMENT-ADVANCE/
NEWHOUSE PARTNERSHIP, A NEW YORK GENERAL
8 PARTNERSHIP

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 LEON ALPERT, an individual, on behalf of
13 himself, on behalf of all those similarly
situated, and on behalf of the general public,

14 Plaintiffs,

15 v.

16 TIME WARNER CABLE, INC., a Delaware
17 corporation, and DOES 1 TO 100,

18 Defendants.
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CV No. 08CV582 BTM

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT TIME
WARNER CABLE'S MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

Date May 23, 2008
Time 11:00 a.m.
Ctrm: 15
Judge: Hon. Barry Ted Moskowitz

**[NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT]**

Complaint: March 13, 2007
FAC: May 16, 2007
Removal: March 28, 2008

1 Pursuant to Federal Rule of Evidence 201, Defendant Time Warner Entertainment-
2 Advance/Newhouse Partnership, through its San Diego Division, dba Time Warner Cable
3 (“TWC”) hereby respectfully requests that the Court take judicial notice of the following facts:

4 1. Plaintiff Leon Alpert (“Plaintiff”) had other means of obtaining the entertainment
5 provided by his ordering additional cable services, other than basic cable, from Time Warner
6 Cable, such as renting movies, reading books, using a satellite service, using another telephone
7 provider, and using another Internet provider.

8 2. Plaintiff could have simply foregone ordering additional cable services, other than
9 basic cable, from Time Warner Cable.

10 Under Federal Rule of Evidence 201, judicial notice is proper for facts “not subject to
11 reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the
12 trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy
13 cannot reasonably be questioned.” Fed. R. Evid. 201(b). Thus, facts that are of common
14 knowledge and understanding are the proper subject of judicial notice. *See S.E.C. v. Musella*, 578
15 F.Supp. 425, 439 (D.C.N.Y. 1984) (court took judicial notice of the fact that law firms that
16 routinely handle sensitive matters impress upon their incoming employees the firm’s expectation
17 that the employees will not publicly discuss matters pertaining to clients); *see also In re Nat’l*
18 *Airlines, Inc.*, 434 F.Supp. 269 (D.C.Fla. 1977) (court took judicial notice that flight attendants
19 enjoyed a reputation for competence and good looks); *Cochran v. NYP Holdings, Inc.*, 58
20 F.Supp.2d 1113, 1123 (C.D.Cal. 1998) (court took judicial notice of the overwhelming public
21 attention and discussion given to the O.J. Simpson trial). When a party has requested judicial
22 notice and supplied the court with the necessary information, judicial notice is mandatory. Fed.
23 R. Evid. 201(d).

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1 TWC respectfully requests the Court take judicial notice of the aforementioned facts and
2 propositions because they are of such common or generalized knowledge that they cannot
3 reasonably be the subject of dispute, or, at the very least, are capable of immediate and accurate
4 determination by resort to resources of reasonably indisputable accuracy.

5 Dated: April 2, 2008

DLA PIPER US LLP

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7 By: s/Jeffrey M. Shohet

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12 a New York General Partnership, through its
13 San Diego Division, dba Time Warner Cable
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